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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

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7 CAROLINA DIAZ,

Case No. 2:17-CV-2246 JCM (VCF)

8 Plaintiff(s),

ORDER

9 v.

10 G. DAVID RICHARDSON, et al.,

11 Defendant(s).

12  
13 Presently before the court is plaintiff Carolina Diaz's motion for default judgment as to  
14 defendant Octaform, Inc. ("Octaform"). (ECF No. 18). Octaform did not file a response and the  
15 time to do so has passed.

16 Also before the court is Diaz's motion for default judgment as to defendant David  
17 Richardson. (ECF No. 19). Richardson did not file a response and the time to do so has passed.

18 Also before the court is Richardson and Octaform's (collectively "defendants") motion to  
19 set aside default. (ECF No. 20). Diaz filed a response (ECF No. 23), to which defendants  
20 replied (EF No. 24).

21 **I. Facts**

22 On August 24, 2017, Diaz initiated this action against Richardson, Octaform, and  
23 Octaform Systesm, Inc., asserting six causes of action: (1) hostile work environment in violation  
24 of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e; (2) employment discrimination in  
25 violation of NRS 613.330; (3) negligence; (4) assault; (5) battery; and (6) intentional infliction of  
26 emotional distress. (ECF No. 1).

27 In brief terms, the complaint alleges that Richardson constructively terminated Diaz by  
28 subjecting her to sexual harassment. *Id.* Defendants contend that this action is a retaliatory

lawsuit for a separate trade secrets case that Octaform Canada is currently litigating against Diaz and other individuals. (ECF No. 20).

Defendants also represent that after Diaz initiated this lawsuit, the parties engaged in a months-long meet-and-confer concerning the merits of this action. *Id.* Defendants purportedly engaged in these discussions in order to persuade Diaz to dismiss frivolous claims or amend the complaint. *Id.* At no point during these discussions did defendants file an answer or otherwise respond to the complaint.

On April 17, 2018, Diaz moved for entry of clerk's default without serving defendants. (ECF Nos. 13, 14). On May 22, 2018, the clerk entered default. (ECF No. 17). On November 8, 2018, Diaz filed two motions for default judgment without serving defendants. (ECF Nos. 18, 19).

On March 14, 2019, defendants eventually learned that the clerk had entered default and Diaz was seeking default judgment. (ECF No. 20). Now, defendants move to set aside clerk's default. *Id.*

## **II. Legal Standard**

Federal Rule of Civil Procedure 55(c) provides that "[t]he court may set aside an entry of default for good cause . . ." Fed. Ru. Civ. P. 55(c). To determine if good cause exists, the court considers: "(1) whether the party seeking to set aside the default engaged in culpable conduct that led to the default; (2) whether it had no meritorious defense; or (3) whether reopening the default judgment would prejudice the other party." *United States v. Signed Personal Check No. 730 of Yubran S. Mesle*, 615 F.3d 1085, 1091 (9th Cir. 2010) (quotes and citation omitted). "[J]udgment by default is a drastic step appropriate only in extreme circumstances; a case should, whenever possible, be decided on the merits." *Id.*

While the court considers the same factors prior to vacating an entry of default as it would for a default judgment, the test is less stringent when the court has not entered default judgment. *See Hawaii Carpenters' Trust Funds v. Stone*, 794 F.2d 508, 513 (9th Cir. 1986). Indeed, "[t]he court's discretion is especially broad where . . . it is entry of default that is being

1 set aside, rather than a default judgment.” *Mendoza v. Wight Vineyard Mgmt.*, 783 F.2d 941, 945  
2 (9th Cir. 1986).

### 3 **III. Discussion**

4 Defendants did not engage in culpable conduct because they were conferring with Diaz in  
5 good faith regarding the merits of this action and incorrectly believed that Diaz had abandoned  
6 her claims. *See Signed Personal Check No. 730 of Yubran S. Mesle*, 615 F.3d at 1092 (holding  
7 that culpable conduct requires acting with bad faith). Defendants have also provided email  
8 communications between the parties showing various meritorious defenses to plaintiff’s claims.  
9 *See* (ECF No. 20-2).

10 The court also notes that Diaz obtained clerk’s entry of default without providing notice  
11 to defendants. (ECF Nos. 13, 14, 17). Allowing Diaz to proceed on her motions for default  
12 judgment under these circumstances would be fundamentally unfair and result in greater harm  
13 than simply delaying resolution of this case. *See Signed Personal Check No. 730 of Yubran S.*  
14 *Mesle*, 615 F.3d at 1095 (“To be prejudicial, the setting aside of a judgment must result in greater  
15 harm than simply delaying resolution of the case.”).

16 In consideration of the foregoing, the court finds good cause to grant defendants’ motion  
17 to set aside clerk’s entry of default.

### 18 **IV. Conclusion**

19 Accordingly,

20 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Diaz’s motion for  
21 default judgment as to Octaform (ECF No. 18) be, and the same hereby is, DENIED without  
22 prejudice.

23 IT IS FURTHER ORDERED that Diaz’s motion for default judgment as to Richardson  
24 (ECF No. 19) be, and the same hereby is, DENIED without prejudice.

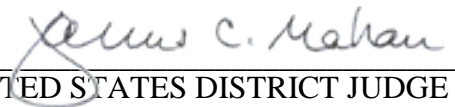
25 IT IS FURTHER ORDERED that Richardson and Octaform’s motion to set aside default  
26 (ECF No. 20) be, and the same hereby is, GRANTED.

27 . . .

28 . . .

1 IT IS FURTHER ORDERED that Richardson and Octaform shall file their responses to  
2 the complaint within ten (10) days from the date of this order.

3 DATED April 24, 2019.

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5 UNITED STATES DISTRICT JUDGE  
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